

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603**

Wednesday, April 9, 2008

Attending:

Commission Members: Floyd McCullouch, Dr. Anna Marie Scheyett, Dr. Richard Brunstetter, Dorothy Rose Crawford, Mazie T. Fleetwood, Ann Forbes, George Jones, Pender McElroy, Emily Moore, Jerry Ratley, Mike Hennike, Pearl Finch, Pamela Poteat, Connie Mele, Thomas Fleetwood, Lois Batton, Martha Martinet

Excused Absences:

Dr. William Sims

Ex-Officio Committee Members: Deby Dihoff, Bob Hedrick, Mark Sullivan

Division Staff: Leza Wainwright, Steven Hairston, Denise Baker, Marta T. Hester, Lynell Otto, Tonya Y. Goode, Chris Phillips, Mark O'Donnell, Glenda Stokes, Stuart Berde, Tracy Ginn, Spencer Clark, Lena Klumper, Jim Jarrard

Others: Erin McLaughlin, Jennifer Hancock, Paula Cox Fishman, Louise G. Fisher, Ann Rodriguez, Diane Pomper, Jack Register, John L. Crawford

Handouts:

Mailed Packet:

- 1) April 9, 2008 Rules Committee Agenda
- 2) January 16, 2008 Draft Rules Committee Minutes
- 3) Proposed Adoption of 10A NCAC 27I .0400 – Secretary Approval of LME Service Delivery
- 4) Proposed Adoption of 10A NCAC 27G .0211 – Provider Accreditation
- 5) Proposed Adoption of 10A NCAC 27I .0102 & .0201 – LME Accreditation
- 6) Proposed Adoption of 10A NCAC 27G .0406 – Letter of Support Required for Licensure of Residential Facilities
- 7) Proposed Adoption of 10A NCAC 27I .0300 – Local Business Plan
- 8) Proposed Adoption of 10A NCAC 27G .7000 – LME Response to Complaints
- 9) Proposed Adoption of 10A NCAC 27G .7004 – Appeals Regarding Utilizations Review Decisions for Non-Medicaid Services
- 10) Proposed Adoption of 10A NCAC 27G .7100 – Target Population
- 11) Proposed Adoption of 10A NCAC 28F .0214 – LME Utilization of State Hospitals
- 12) Proposed Amendment of 10A NCAC 28C .0201 – State Facility Environment

Additional Handouts:

1. Comment Grid for Rules Submitted at April 9, 2008 Meeting
2. Comments to the Proposed Amendment of Rule 10A NCAC 28C .0201 – State Facility Environment
3. Mercer Report – Independent Evaluation of the Performance of Local Management Entities
4. Excerpt from Morbidity and Mortality in People with Serious Mental Illness – Dr. Richard Brunstetter’s Handout

Call to Order:

Floyd McCullough, Chairman, Rules Committee, called the meeting to order at 9:40 am. Mr. McCullough delivered the Invocation with a special acknowledgment of our troops who are fighting overseas. The Invocation was followed by the reading of the Ethics Awareness and Conflict of Interest reminder. Mr. McCullough acknowledged that Mark O'Donnell was going to be the presenter for Dick Oliver. Introductions of everyone in attendance, including members of the public, were made.

Dr. Brunstetter asked that the sentence “Dr. Brunstetter questioned the Clients Rights Assurance Committee sending an annual report and sending it to the Local Management Entity (LME)” be modified as follows: “Dr. Brunstetter questioned *adequacy of* the Clients Rights Assurance Committee *only* sending an annual report and sending it to the Local Management Entity (LME)”. The minutes were amended to reflect this addition.

Approval of Minutes:

Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the January 16, 2008 Rules Committee meeting to include Dr. Brunstetter’s correction.

10A NCAC 27I .0400 – Proposed Adoption of LME Service Delivery

Leza Wainwright, Co-Director, NC DMH/DD/SAS, presented the proposed adoption of the LME Service Delivery rule. This rule establishes in administrative code the process that DHHS will follow to approve LMEs to directly deliver services, in accordance with the requirements of G. S. 122C-.112(a)(26) and G.S.122C-141. No comments were received during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

10A NCAC 27G .0211 – Proposed Adoption of Provider Accreditation

Jim Jarrard, Team Leader, Accountability Team, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), presented the proposed adoption of the Provider Accreditation rule. The proposed rule satisfies requirements established in Session Law 2006-142 to assure that all policies established in Communication Bulletins published by the NC Department of Health and Human Services (DHHS) on mental health reform have supporting rules. There is a requirement that service providers of services identified in Division of Medical Assistance (DMA) Clinical Policy 8A and subsequent amendments to that policy be nationally accredited within three (3) years of enrollments as a service provider. This rule supports that requirement. No comments were received during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Jarrard received the following questions and comments from the Rules Committee members regarding this rule:

- Dr. Scheyett, Co-Chair, Rules Committee, asked whether the burden is on the provider to prove that the accrediting body they are interested in meets all of the requirements or whether the Division will investigate a number of accrediting bodies and have a list of them available.
 - Mr. Jarrard responded that the Secretary of DHHS will provide a list of approved accrediting bodies.
- Deby Dihoff, Executive Director, NAMI/NC, Ex-Officio Committee member, asked if the scope of the accreditation requirements is clear in the rules.
 - Mr. Jarrard replied that the accreditation requirement will be limited to the services mentioned.
- Ann Forbes, Commission member, asked where the services requiring accreditation are located since providers will need to know where they can go get the information; she also questioned if LMEs have to be.
 - Mr. Jarrard noted that the services are identified in DMA Policy 8A.
- Dr. Scheyett asked if the Service Definition outlines what needs to be accredited and what services must be provided by agencies that are accredited. Dr. Scheyett also suggested that the title of the rule be changed to emphasize the requirements for accrediting bodies not the provider.
- Ms. Dihoff questioned whether the Division national accreditation will eventually be required for state funded services.
 - Mr. Jarrard stated that he is not prepared to respond to that question.
- Ann Rodriguez, NC Council of Community Programs, acknowledge the Council's support of national accreditation efforts but noted the need for providers, the Division and LMEs to work together to smoothly transition consumers to other service providers when providers are not accredited. Ms. Rodriguez also made available a copy of the Council's position.
 - Mr. Jarrard stated that in the most recent implementation update, there is a broad outline of steps to be taken for providers who can not assure their LMEs that they have or are actively engaged in receiving national accreditation.
- Bob Hedrick, Executive Director, NC Providers Council, Ex-Officio Committee Member, stated that Implementation Update #42, requires providers to meet certain requirements by designated dates. He further added that the Legislative Oversight Committee mentioned that the Secretary is considering shortening the requirement from 3 years to 2 years for a provider to get nationally accredited. He opined that references to accreditation should be contained in DMA rules.

10A NCAC 27I .0102 and .0201 – Proposed Adoption of LME Accreditation

Jim Jarrard presented the proposed adoption of the LME Accreditation rule. The proposed rule satisfies requirements established in Session Law 2006-142 to assure that all policies established in Communications Bulletins published by DHHS on MH reform have supporting rules. Communication Bulletin #50 requires a LME to have accredited system management functions. This rule supports that requirement. No comments were received during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Jarrard received the following questions and comments from the Rules Committee members regarding this rule:

- Mark Sullivan, Executive Director, Mental Health Association of Orange County, Ex-Officio Committee Member, asked if there are only four (4) approved accrediting agencies at this time.
 - Mr. Jarrard responded, yes for LMEs. Mr. Sullivan asked can they also approve providers. Mr. Jarrard answered, they may, but if a LME also provides services then the LME must choose two separate accrediting agencies. If the provider agency is separate from the LME yes. This is only for those services that require national accreditation.
- Ms. Rodriguez responded that the NC Council of Community Programs supports the rule and is asking that the Department work with them on the actual implementation of national accreditation.
- Dr. Scheyett asked if the effective date of the rule has to be as soon as it moves through the process or can the effective date be changed to match other relevant time lines.
 - Mr. Jarrard stated that flexibility will have to be determined.

Discussion of Mercer Report

Mr. McCullough called for a 15 minute break from the agenda to permit the Commission members and Ex Officio Committee members to discuss the Mercer Report during the meeting. This report was not an agenda item.

- Dorothy R. Crawford, Commission Member, stated that she wanted to know what information was involved with the Tier 1 – 3 section of the report and why was this not shared. She also noted that some of the LMEs have computer systems which are not up-to-date.
- Ms. Dihoff stated that she thought this report was the interim report and questioned what will be different about the final report.
- Steven Hairston, Chief, Operations Support Section, NC DMH/DD/SAS, indicated that the report was not generated by the Division. The Mercer Report was released by the Secretary's Office but it is located on the Division's website.
- Mazie Fleetwood, Commission Member stated that she read the report and noticed that Mercer used a lot of industry standards for managed care and a lot of information from other states that have adopted different models than North Carolina's. She noted that these standards are not all applicable in NC. She added that one thing we have all been concerned about the services available in our area.
- Mr. McCullough asked Dr. Michael Lancaster, Co-Director, NC DMH/DD/SAS, if he thought it was a fair report.
 - Dr. Lancaster stated that he does not really have an opinion on the fairness of the report and stated that he thought that Mercer did a reasonable job on trying to assess the LMEs.
- Jennifer Hancock, Director, Mental Health Association, Wilson County, stated that as a citizen of North Carolina, she is appalled that the state paid \$800,000 for something where no actual data were provided along with the summary report. Ms. Hancock was attending as a member of the public.

- Thomas Fleetwood, Commission Member, stated that some data should have been given to support what a Tier 1, Tier 2 and Tier 3 are because major decisions will be based on this; he noted that the report is analogous to a report card.
- Ms. Fleetwood stated that some of the LMEs did really well on the Mercer Test. For example, Mecklenburg and Crossroads came out in Tier 1 in all three categories and a number of programs came out in the second tier as well.
- Pearl L. Finch, Commission Member, suggested that Pender McElroy, Chairman, Commission for MH/DD/SAS, investigate who did the contract and determine what kind of data that will be.
- Mr. Sullivan stated that he understands that the state has spent millions of dollars on outside consultants to come in to evaluate the system but no one is happy with the product received; as such, the product doesn't move the system forward. He suggested that it may be more justifiable to take those resources and build the capacity of the Division to perform some of these functions that the outside parties are paid to do.
- Mr. McCullough suggested that the Division should come up with certain criteria and go to all 25 programs and study them based on the criteria that we are supposed to be following.
- Mr. Hairston clarified that the Division did not contract with Mercer, the Governor's Office contracted with Mercer. The final product was delivered to the Governor's Office, the Department of Health and Human Services, and the Division of MH/DD/SAS.
- Pender McElroy, Chair, Commission for MH/DD/SAS, asked if the Division has the underlying data of the report. Mr. Hairston stated that the Division does not have any work papers or work product of Mercer.
- Dr. Scheyett, stated that the tool that was used to collect the data from Mercer is essential for the state to know what the report means. If this tool cannot be shared, it seems that it is seen as a proprietary product of the consultant. She questioned whether one can have a proprietary product resulting from expenditure of public/state dollars.

Copies of the Mercer Report were distributed to the Commission members prior to the conclusion of the Rules Committee meeting.

10A NCAC 27G .0406 – Proposed Adoption of Letter of Support Required for Licensure of Residential Facilities

Mark O'Donnell, LME Systems Performance Team, NC DHM/DD/SAS, presented the proposed adoption of Letter of Support Required for Licensure of Residential Facilities rule. Session Law 2005-276, Section 10.40(a) (the Appropriations Act of 2005) requires an applicant for mh/dd/sa facility licensure to submit with the application to DHHSR a letter of support obtained from the LME in whose catchment area the facility is located.

The proposed rule is necessary to ensure that residential treatment facility beds are available where needed, unnecessary costs to the State do not result from excess facilities that result in duplication, high vacancy rates, and underutilization, and that individuals who need care in residential treatment facilities may have access to quality care.

Mr. O'Donnell received the following questions and comments from the Rules Committee members regarding this rule:

- Richard Brunstetter, Commission Member, suggested that residential facilities can be most effective when they are located close enough to the home base for there to be family based involvement in treatment.
- Mr. McElroy asked if there is any area of the state that has a surplus of beds.
 - Mr. O'Donnell reported that there is a preponderance of beds located in the Triad, Mecklenburg, and Cumberland County areas with individuals being placed in those locations from other catchment areas.
- Dr. Scheyett noted the name change of Division of Facility Services (DFS) to Division of Health Services Regulation; she added that this name change should be reflected in line 58, item (g) of the rule on p. 31 of the packet.

Upon motion, second and unanimous vote, the Rules Committee approved the proposed adoption of 10A NCAC 27G .0406 with the amendments to be forwarded to the full Commission for final review. Line 58 of the rule will be changed from DFS to DHSR.

10A NCAC 27I .0300 – Proposed Adoption of Local Business Plan

Mark O'Donnell, LME Systems Performance Team, NC DHM/DD/SAS, presented the proposed adoption of Local Business Plan rule. House Bill 2077 included legislation which requires every area authority or county program to develop a LME business plan for the management and delivery of mental health, developmental disabilities, and substance abuse services. A LME business plan shall provide detailed information regarding how the area authority or county program will meet State standards, laws, and rules for ensuring quality mental health, developmental disabilities, and substance abuse services, including outcome measures for evaluating program effectiveness. Comments were received during the 60 day publication of this rule; in particular, there was concern about signatures needing to be on a single page when signatures from people in multiple counties are needed. Mr. O'Donnell noted that this could be amended to require signature on multiple pages. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. O'Donnell received the following questions and comments from the Rules Committee members regarding this rule:

- Dr. Scheyett asked if there is any guidance anywhere else as to what needs to be in the plan.
 - Mr. O'Donnell stated it was in the function and elements under the functions and further added that there is a lot of information the LMEs has access to on the web site.
- Dr. Brunstetter requested an explanation of the Business Rules and Mr. O'Donnell explained some of the changes and also provided that the business rule is an attempt to get the LMEs to define their operating criteria.

10A NCAC 27G .7000 – Proposed Adoption of LME Response to Complaints

Stuart Berde, Team Leader, Customer Service and Community Rights, NC DMH/DD/SAS, presented the proposed adoption of LME Response to Complaints rule. The proposed rule is

necessary to provide a standardized system clarifying LME responsibilities to address complaints regarding the provision of public services. The NC Council of Community Programs provided a comment during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Berde recommended changes to 10A NCAC 27G .7003 regarding language involving changing working days to calendar days in designated places throughout the rule. He also acknowledged that the Disability Rights of North Carolina should be substituted for Carolina Legal Assistance (CLA) in Rule 10A NCAC 27G .7002, lines 14-15.

Mr. Berde received the following questions and comments from the Rules Committee regarding this rule:

- Ms. Crawford asked if the changes covered the Thanksgiving and Christmas holiday.
 - Mr. Berde responded that the standard assumption is that the holidays and weekends are not included in calculating days for purposes of this rule; the count would include the next business day after a holiday or a weekend.

10A NCAC 27G .7004 – Proposed Adoption of Appeals Regarding Utilization Review Decisions for Non-Medicaid Services

Stuart Berde presented the proposed adoption of Appeals Regarding Utilization Review Decisions for Non-Medicaid Services rule. This rule is necessary to provide a standardized LME response system when clients or their legal guardians appeal utilization review decisions for Non-Medicaid services. No comments were received during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Berde received the following questions and comments from the Rules Committee members regarding this rule:

- Ms. Dihoff asked if there are a different set of rules for complaints by citizens for the STR process if the LME is not able to develop a provider network.
 - Mr. Berde responded that any complaints regarding issues that are not specifically covered in the Federal Medicaid Appeal Law would be appropriate to be complained about here.
- Dr. Scheyett stated that in 10A NCAC 27G .7002, it seems that if she has a complaint about her LME then she would have to appeal or report it to her same LME.
 - Mr. Berde responded that she may complain to the Division and Disability Rights of North Carolina and that materials sent out to the public includes this information about the different avenues which can be pursued.
- Dr. Scheyett suggested that it might be useful to consider a requirement that the LME will provide information regarding other avenues of appeal/complaint if the complainant is not satisfied with the results of the LME decision at the end of the complaint process.
- Connie Mele, Commission Member, noted that the complaint process is outlined in Consumer Rights Handbook.

10A NCAC 27G .7100 – Proposed Adoption of Target Population

Spencer Clark, Assistant Chief, Community Policy Management, NC DMH/DD/SAS, presented the proposed adoption of Target Population rule. The proposed rule is necessary to define

individuals who are given service priority. No comments were received during the 60 day publication of this rule. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Clark received the following question and comments from the Rules Committee members regarding this rule:

- Mr. Hedrick stated that although the target population in definition is very important as it lets the whole system know who to be served and how, it is also important to know when you add a new target population eliminate, or change a target population. He inquired about adding some additional language to reflect notice when a change in the target population occurs. Specifically, Mr. Hedrick suggested that item (c) be changed to read as follows:
“Establishment of a new target population, *a change in the target population*, or the elimination of an existing target population shall be posted on the Division’s website for a 45 day comment period.”
 - Mr. Clark advised that the changes for target population will be effective July 1st.
- Ms. Dihoff asked what ever happened to individuals in the non-target group.
 - Mr. Clark responded that the transitional non-target population was intended to accommodate the clients who were in the system when the system was put in place. This was maintained for approximately three years. It was eliminated through a process of attrition as the LMEs stopped billing and reporting that category.

Following this rule presentation, Mr. McElroy stated that he had received an email from Leza Wainwright about the Mercer Report and indicated that she will discuss it at the May 15th Commission meeting. The Rules Committee members agreed to prepare their questions send them directly to Ms. Wainwright prior to the May 15th meeting.

Mr. McCullouch stated that the Proposed Amendment of 10A NCAC 28C .0201 – State Facility Environment will be postponed until July.

10A NCAC 28F .0214 – Proposed Adoption of LME Utilizations of State Hospitals

Lena Klumper, State Operated Services, NC DMH/DD/SAS, presented the proposed adoption of LME Utilizations of State Hospitals rule Laura White’s stead. Adoption of the proposed rule establishes in administrative code the Hospital Utilization Plan as first identified in the State Mental Health Plan. The proposed rule is necessary to promote equitable and sustainable utilization of the State operated psychiatric hospitals. This is a Secretary rule and presented for information and comment. Therefore, no action is required

Ms. Klumper received the following question and comments from the Rules Committee members regarding this rule:

- Ms. Moore asked if there has been a decline in the population at the State hospitals.
 - Ms. Klumper stated that there has been a decrease this fiscal year.

Discussion of 10A NCAC 28C .0201 – Proposed Amendment of State Facility Environment

As noted above, presentation of this rule was postponed to the July 2008 meeting of the Rules Committee. However, following the presentation of the rules, Mr. McElroy stated his term on the Commission will expire June 30, 2008; as such, he will not be attendance during the Rules Committee meeting in July. Mr. McElroy stated that he wanted the record to reflect that he had

changed his mind and would change his vote about the no-smoking rule and that the total ban on smoking is not the way to get people with mental illness to stop smoking. Mr. McElroy stated that he would allow the patients to smoke.

Ms. Moore stated that patients at Cherry Hospital the patients go outside, in the stairwell or gazebos and do not smoke on the ward. Ms. Moore stated that the patients do need a little bit of smoking.

Dr. Brunstetter also stated that he had voted against the proposed amendment but has since changed his mind on the smoking ban and that he would like to eliminate the smoking in the-state facilities. Dr. Brunstetter cited the excerpt of the article he distributed and the impact that it cited smoking as having on the lifespan of those who smoke. Mazie T. Fleetwood, Commission Member, stated that it really is a health and safety issue that we have to keep in mind as well.

Dr. Scheyett stated that since smoking is banned in other State facilities are we saying that people with mental illnesses are not as important as the rest of us in terms of protecting them from illnesses such as lung cancer. The State needs to find something to replace the functions that cigarettes serve (e.g. ability to focus and concentrate) and to address nicotine addiction that does not cause lung cancer. Ms. Crawford stated that the State needs to address the issue and that people with mental illness and substance abuse should be on an equal level.

Ms. Forbes stated that schizophrenics smoke so much in order to think clearly and if the state is going to stop that, then the consequences must be looked at and there has to be some help in the form of education, classes, nicotine patches and counseling.

Mr. Sullivan stated that people in State Psychiatric Hospitals are not free to go and come as they please like people are in other State buildings. He mentioned that he has a concern about mental health consumers who are smokers because if they know they cannot smoke they may be reluctant to seek treatment when they need it.

Deby Dihoff questioned whether members of the CFAC had been consulted regarding the proposed amendment to this rule.

Jennifer Hancock, a member of the public, expressed concern about prisoners being granted rights that those in state facilities do not have.

Public Comments

Paula Cox Fishman thanked the Rules Committee and commented on the hospital bed utilization suggesting that it not be based on per capita. Ms. Crawford stated that for the Committee members whose terms are ending that she greatly appreciate everything they have done and they will truly be missed. Ms. Forbes stated that Mr. McElroy did an excellent job as Chairman of the Commission and he received a round of applause from the members.

There being no further business, the meeting adjourned at 1:45pm